

**Governor's Upper Yellowstone River Task Force**  
**Meeting Summary**  
**June 11, 2003**  
**Yellowstone Inn**  
**Meeting began at 7:00 p.m.**

**I.     Introductions**

**Members Present:**

John Bailey, Chair  
Roy Aserlind  
Andy Dana  
Michelle Goodwine

Dave Haug, Vice Chair  
Jerry O'Hair  
Brant Oswald  
Ed Schilling

Rod Siring  
Bob Wiltshire

Ken Britton, USFS Ex-Officio  
Tom Olliff, YNP Ex-Officio  
Robert Ray, DEQ Ex-Officio

Laurence Siroky, DNRC Ex-Officio  
Allan Steinle, Corps Ex-Officio  
Joel Tohtz, FWP Ex-Officio

**Others Present:**

Liz Galli-Noble, Coordinator  
Kelly Wade, Secretary  
Jacqueline Isaly, Assistant  
Jim Barrett  
Scott Bosse  
Chuck Dalby

Lionel Dicharry  
Tom Hallin  
Karl Biastoch  
Bill Moser  
Daryl Smith  
Deb Corbett

Margot Aserlind  
George Jordan  
Jason Lehmann  
Pat Wagman

**II.    Prior Meeting Minutes**

**John Bailey:** Jerry, I wanted to ask you about a comment made at the last meeting. Bill Moser said that your house was in the flood plain. I don't know how your house on that bench can be in the flood plain? I didn't know if you want to leave that in the minutes or not? You didn't make a comment when he said it at that last meeting, so I'll let go at that; but when I read these minutes again, I wanted to bring it up.

**Jerry O'Hair:** I remember him saying it, and my only follow-up on it is that I'm not sure whether it's in the flood plain or not, because I haven't seen the new maps.

**John Bailey:** If you don't want it changed, that's fine. I just wanted to bring it up, because my sense is that on that bench you wouldn't be in the flood plain; but that's fine.

**Jerry O'Hair:** That would be my sense also.

**Brant Oswald:** John, I had one question. Someone had initially called me and said they were confused by what was stated in the June 11 minutes—when Laurence was giving the State floodplain regulations, talking in terms of base elevations. I just thought it might be useful to, maybe it doesn't even necessarily need to be in the context of the minutes, but maybe just a restate of what the State regulation is.

**Laurence Siroky:** I don't know what part of the minutes you're referring to, but were we talking about the bridges, and confined encroachment?

**Brant Oswald:** Increases in base elevations and the State statute concerning that [pages 18, 22].

**Laurence Siroky:** We have the State statute, and we have the County regulations. The County is going to adopt regulations more stringent than the State and does not allow any building in the floodway; there can be no rise in the base flood elevation. But if you're in the flood plain, you can raise it at least a foot-and-a-half.

**John Bailey:** Foot-and-a-half or half-a-foot?

**Laurence Siroky:** Half-a-foot, I mean.

**Andy Dana moved to approve the June 2, 2003 minutes as written. Dave Haug seconded the motion. The motion passed unanimously.**

### **III. Financial Updates**

| <b>EXPENDED GRANTS</b>                          |                  |               |   |
|---|------------------|---------------|---|
| <b>Grant Name</b>                               | <b>Completed</b> | <b>Amount</b> | <b>Study Component</b>  |
| DNRC Watershed Planning Assistance Grant        | 6/30/99          | 2,100.00      | Physical Features Inventory   |
| DNRC HB223 Grant                                | 7/30/99          | 10,000.00     | Aerial photography  |
| DNRC Riparian/Wetlands Educational Grant        | 6/30/00          | 960.99        | <i>Hydrologic Response to the 1988 Fires</i> Workshop                             |
| DEQ 319 Grant (1 <sup>st</sup> )                | 9/30/00          | 40,000.00     | Coordinator position  |
| DNRC Watershed Planning Assistance Grant        | 1/31/01          | 10,000.00     | Watershed Land Use Study  |
| DEQ Start-Up Grant                              | 6/26/01          | 49,138.00     | Coordinator position, Admin secretary, additional cross-sections, operating exper |
| DNRC HB223                                      | 10/1/01          | 6,500.00      | Riparian Trend Analysis   |
| BLM Funding                                     | 10/26/01         | 10,000.00     | Wildlife Study  |
| DEQ 319 Grant (2 <sup>nd</sup> )                | 3/21/02          | 58,000.00     | Coordinator position  |
| DEQ 319 Grant (3 <sup>rd</sup> )                | 9/30/02          | 44,000.00     | Coordinator position  |
| EPA RGI Grant                                   | 12/20/02         | 30,000.00     | Geomorphology study   |
| <b>CURRENT GRANTS</b>                           |                  |               |   |
| <b>Grant Name</b>                               | <b>Amount</b>    | <b>Spent</b>  | <b>Remaining Balance</b>  |
| DNRC RDGP Grant (expires 7/03)                  | 299,940.00       | 288,621.63    | 11,318.37   |
| DEQ 319 Grant (4 <sup>th</sup> ) (expires 3/04) | 122,200.00       | 60,586.60     | 61,613.40   |

### **IV. Other Task Force Business**

**John Bailey:** Other Task Force business?

#### **1. *Governor's Conference on the Upper Yellowstone River***

You may have seen in your meeting packets that we now have a date for the Governor's Conference on the Upper Yellowstone River. We were told today by Todd O'Hair that he "just got out of a meeting with the Governor about this issue and she's extremely supportive and excited to assist in any way. We have her penciled in on the schedule for the evening of October 20<sup>th</sup>. Given it is this far out, if we need to change the date, I believe her schedule is open enough that we can do that." So, we're on for this date. The conference would begin on the evening of the 20<sup>th</sup>, and continue through 21<sup>st</sup> and 22<sup>nd</sup>, and for people who are traveling long distances, the 23<sup>rd</sup> would be just breakfast and travel.

**Brant Oswald:** What month are you referring to?

**John Bailey:** October.

**Andy Dana:** What days are those?

**Michelle Goodwine:** It's three days, and what times during those days?

**John Bailey:** Two days, October 21<sup>st</sup> and 22<sup>nd</sup> are full days, the evening of the 20<sup>th</sup>.

**Liz Galli-Noble:** It's Monday through Thursday.

**John Bailey:** Well, Thursday is really just a travel day; if you're a local person, you can go home in 20 seconds. There's nothing functional on the 23<sup>rd</sup> except for the people who stayed overnight and must travel home that day.

**Ed Schilling:** So, it's going to be all day on the 21<sup>st</sup> and 22<sup>nd</sup>?

**John Bailey:** Correct. The schedule is coming; that has yet to be done; we had to get dates set first. We're inviting the Congressional staff, the Senators and the Representative, whether they can make it, we don't know? Their staff wanted us to run this on the Columbus Day holiday, but we could not find a place to do it that weekend. This was the only open time, if we're going to do it in Park County, and so we've gone ahead with this.

Any other Task Force business?

There is one more thing. At the speed we're moving, we need to set a lot more Task Force meeting dates.

**Andy Dana:** John, I have a question. This is a Tuesday and a Wednesday? I don't know how many people have jobs around here on the Task Force, but that does not seem like great planning to me. I'm not going to be able to make this.

**John Bailey:** If we go with a weekend, when can we do it?

**Liz Galli-Noble:** The earliest they could give us a weekend was Halloween weekend or into November.

**Andy Dana:** Well, what's the matter with that?

**Liz Galli-Noble:** The original thought, when we discussed this with the Governor's office, was that Todd O'Hair was hoping to do some tours. So, the earlier in October the better. Weather is a concern, people traveling into November, cancelled flights, and the like. We were trying to keep it as early in the year as possible. Also, the Task Force terminates in August, this is already a month-and-a-half after your completion date.

**John Bailey:** I think we need to have some discussion, if people want it, on a different date.

**Andy Dana:** I think, during the middle of the week, particularly right in the middle of the week, is not good for working people.

**Roy Aserlind:** We are going to be in Lima, Peru on that date; so we can't make it.

**Andy Dana:** I'll probably be in Sacramento on that date.

**Bob Wiltshire:** Who is our target audience?

**John Bailey:** The Governor. The Governor and all our partner agencies. I think the audience is very broad, I don't think it is narrow. I think this is a valid issue. When we met with Todd O'Hair and the Congressional staff, they were recommending trying to get it around that Columbus Day weekend. We're assuming 200 people. If we move the event to Bozeman, we could do this whenever we wanted, but if we want to do it in Park County, we have one venue and it's booked up. There was the idea of trying to do some things in the field, but the agenda has never been made.

**Andy Dana:** I'm not going to object to it, but I probably won't be able to attend, and I think that half of the Task Force probably won't either because of conflicts with work.

**Michelle Goodwine:** Why do we have more flexibility if it's held in Bozeman?

**John Bailey:** There are more places to have a big function. If we try to do it here, and we have 200 people, and we're talking about breakout sessions, I don't know if we have the facility. The facility is the issue.

**Bob Wiltshire:** It seems to me that we need to be driven maybe a little bit at least by who our target audience is. If our target audience is the Governor and agency policy makers, and we'd be pretty much coordinating with them, if this is convenient for them, we need to look at that. Being a reformed government employee, I will say that it is a whole lot easier to get them to come to a meeting during the week than on a weekend.

**Andy Dana:** If our target audience is public...

**Bob Wiltshire:** That's why I asked who the target audience is.

**John Bailey:** I think it is both.

**Scott Bosse:** Could you have it at Chico?

**John Bailey:** That's where we're trying to have it. Basically, we were trying to do it earlier in the month, but Chico is all booked up. Then, if we want a weekend, it's into November. The later it gets, we may have a problem with Liz's availability. That is another issue.

**Andy Dana:** I've spoken my piece.

**John Bailey:** Is the following week available?

**Liz Galli-Noble:** At Chico? I believe the following week was available. The problem is, with Chico, they do all these different types of events like the Murder Mystery Weekend, so it's sort of hit-or-miss with Fridays, Saturdays and Sundays being booked or available. Once it was apparent that full weekends would not be possible in early October, I actually tried to start the conference on a Sunday. I figured Sunday night was a better time to start because more local people would be able to attend, but there was absolutely nothing available until Halloween weekend, which I thought for people with kids would be impossible. But Halloween weekend is another option, and then November opens up for weekends and weekdays.

**Ed Schilling:** How about this facility right here? Can we hold it in Livingston rather than Chico?

**Liz Galli-Noble:** I don't think they can accommodate that number of people. I think we could split the number of people, some would have to stay someplace else. And actually I don't think their meeting rooms quite accommodate 200.

**Michelle Goodwine:** Yeah, they do. If they cover the pool, it's a 200 limit, maximum occupancy.

**Ed Schilling:** What weekends are available here in Livingston?

**Liz Galli-Noble:** At the Yellowstone Inn? I would have to get exact numbers from them concerning meeting facilities and overnight accommodations.

**Bill Moser:** Dane across the street has a room that's 50 percent bigger than what Chico has. It's in a basement, but it opens up to the full length of this building, and he's quite economical.

**Dave Haug:** The Paradise?

**John Bailey:** So, what's the pleasure?

**Michelle Goodwine:** I guess going off of what Andy said, if we try and host this in the middle of the week, maybe we aren't looking at a target audience of 200 people; so we can look at a smaller facility or different arrangements. Is that realistic? And if the majority, outside of the Governor and her staff, are we looking at drawing primarily from Livingston and Gardiner? If we're looking at that, I think what Andy says has some merit in that it is not just the Task Force members that we have to be considerate of, but how many people are going to give that kind of time, and are we really going to be, realistically, looking at 200 people per day, giving up their work week to attend this?

**John Bailey:** So, do people want us to explore other options and see if there are any that would work?

**Andy Dana:** I think we do need to address what Bob's concern is: is who is our audience? If we're accommodating, scheduling this to accommodate the Governor and agency personnel, I have a queasy feeling in my stomach that we're excluding the public by doing that, or we're not being accommodating to the public. That's not ever what this Task Force has been about. That's fine to accommodate the public officials, but I do think that the Task Force, at least the people around the table, who I've worked with over the past few years,

have really wanted to extend the greatest outreach to the public as we could. We might think about some other type of presentation for the public, if we do that.

**Bob Wiltshire:** If I can take off of that, I think, Andy, that maybe we need to start thinking that way, because we tried and tried to engage the public and we can't get but 40 or 50 people to show up for a half-day or a one-day event. I think we're living in a dream world if we think the public is going to come and show up for two full days of sitting around listening to the Task Force, or our report, or a science report. I just really don't see that happening. I do see the public coming to a targeted session about what we're recommending. I think if we do this mid-week, and aim it at agency-type people, we could get a couple hundred. I don't know, but I could see a lot of agencies telling a lot of their staff that they need to be at Chico; but I don't know? Do we need two days? Have you guys roughed out an agenda, talked about it?

**John Bailey:** The first time we met with Todd O'Hair, we went up to find out where we stood because we hadn't talked to him in a long time. We said that we didn't quite know what they were expecting from us, and he said, "Well, what you ought to do is do a two-day conference and have break-out sessions, and we'll let you use the Governor's name." So that's where the concept came from. He said, "John, I think that the Task Force should go out with a bang," and do this sort of thing. Then we met with Congressional staff, and they said that they were hoping that they could get the two Senators and Representative here also. We couldn't get a facility that one weekend that they were hoping for. They knew the schedule, it was sent, they didn't know the schedule of the House, but they're going to be off that weekend, so that was sort of where some of the accommodation was coming from.

**Robert Ray:** I feel like the group is groping in the dark right now, trying to figure out exactly what this conference is going to accomplish and who you want to work with. And I think that that topic needs to be really better defined before you try and set up what the appropriate dates are. If you want the public, I think expecting the public to come for two full days during the workweek is not really very realistic. If you want to get them involved, then weekend and evening meetings would be meetings that might be appropriate. What's the message you want to be getting out? And, who is it you're trying to get the message out to? If it's Congressional, or if it's the State folks, sure it's more convenient for them but if you want to get both, no venue can be for the State folks, they're supposed to be the servants of the people.

**Bob Wiltshire:** Have we got Chico reserved?

**Liz Galli-Noble:** Yes.

**Bob Wiltshire:** I would say we certainly shouldn't cancel at this point, because then we might just flat out lose it. I'd be willing to sit on a committee to start looking at an agenda and figuring out a little bit more of this, instead of spending more time on this now.

**John Bailey:** Well, that's one of the things that Liz and I were talking about today. There's been various talk, then that has to now get moving. We were trying to figure out what venues, and whether or not we could meet the requirement of the Congressional staff.

**Liz Galli-Noble:** When I spoke to Chico, and they said to me, "If you don't make a decision soon, you may not get in at all," I said to John, "We've got to at least try to figure out some dates that work for the core group, namely, Number 1, the Governor. I just heard today, actually this morning, she could make the 20<sup>th</sup>, a dinner and speech type event. I think having a subcommittee is a great idea. I'm willing to accommodate whatever the Task Force wants, but I have to warn you that we have to give people at least a couple of months notice or they're not going to be able to fit it into their schedules. The target audience is a good question, and to be honest, we talked about it in that we wanted both: we were hoping for landowners and people from Paradise Valley, Park County, absolutely, but we also want people to hear the science and that includes government agency folks.

**Andy Dana:** I'm confused. Does this 20<sup>th</sup> to 23<sup>rd</sup> date work for the Congressional Delegation?

**John Bailey:** We don't know. We could not meet the earlier October date that they wanted. This became the next one, and Todd was talking about doing tours out on the river....

**Andy Dana:** Well, my inclination always is, not to rush into something if you don't know what you're doing. And I think if it's a question of scheduling a date because we have to schedule a date, without knowing what we're doing, or scheduling a date sometime down the road that results in a much better conference that serves all the people, I would vote for scheduling something down the road, whether or not there are field trips or not.

**Liz Galli-Noble:** Or a coordinator to do the work; my funding could potentially run out by November 1. If we're going to get people from Washington DC, we're going to have to set a date fairly soon. Actually, it was the Congressional staff that suggested that we give dates as soon as possible; because the earlier they get the dates on their calendars the more likely they can come.

**John Bailey:** But I think we're going to have to wait now, pull back, and try to get something by early July. See what the other options are.

**Liz Galli-Noble:** Okay. That's fine.

**Brant Oswald:** On an even more practical level, are there deadlines that, if we kept those dates for Chico, that we need to provide a deposit or anything?

**Liz Galli-Noble:** I would say within the next couple of weeks we're going to have to commit one way or the other to Chico.

**John Bailey:** You're going to have to get a hold of Duncan, if you can, and find out when you can get together. We'll use Bob and, who else wants to be on this subcommittee? I'm not here for the next three weeks.

**Andy Dana:** I'm not sure what the charge is?

**Bob Wiltshire:** Identify the target audience, and draw up the agenda.

**John Bailey:** We've got to figure out the options, and get the agenda going. If it moves into November, we should just eliminate field trips because we can't count on the weather. It's just brutal at that time, even that period in October is high risk. We need the agenda, and I think the agenda may help define the audience, and we'll have to look at these other venues, because, if we're using breakout sessions, we have to have access to more than one room. There could be several science studies going on at one time. That we don't have the agenda I think is crucial in defining if it is a full two days, or not.

**Roy Aserlind:** If I could speak to the agenda, I would think the most obvious thing, the thing that would draw the most people in, would be our recommendations. Focus the agenda on the recommendations, and I would go so far as to say, whenever you have, for instance, you made a recommendation about unused facilities, bridge abutments. Have someone take a few photographs of that. We had quite a discussion on the bridges. Take the bridges, photograph them, discuss that in the agenda. The isthmus at Ninth Street Island, that certainly would be a very graphic thing to demonstrate. In other words, something to build what the Task Force has been working on. I would think we should have a, in connection with the recommendations, a pictorial reference, which is already in existence, of the geomorphological structures along the river. In other words, bring the audience up to date and get into their heads. Let them know where we have gone, and what the culmination of our years of efforts have resulted in.

**John Bailey:** I would agree. My sense is that, if the Governor comes to the opening night, and if all the congressional staff comes, we'll have lots of speeches, because they're not going to come to sit, they want to say something. But it seems to me that, if we have the Governor, and she's only there one night, we have to go through all the recommendations, and that will take a lot of time, because at the rate we're going, we're going to have quite a few. It may be that we're going to have to go through these recommendations in a formal sort of setting, and then, maybe, in the breakouts, or whatever; then in the following days, there's more in-depth information. My mind is saying that, at some point, there will be some grouping here, but that may not happen. That's my dream, but I'm not so sure it necessarily will come that way. Then the breakout sessions might shed more in-depth information, but we'd have to start at four in the afternoon and end at midnight if we're going to do that with the Governor, and she might fall asleep. I think they want to hear it, but I have a feeling that this is

going to be a long first night, given the amount of recommendations that we have. But if it is the only chance we have with the Governor, we're going to have to tell them to her.

**Roy Aserlind:** My perspective is, in a sense, perhaps everyone will disagree with me, but we're there to do a selling job. That these recommendations are not just pulled out of a hat, these are based on scientific studies, experiments, extensive discussion, even down to the final wording. I think, in a way, this is going to be a selling job.

**John Bailey:** And I think the other selling job was made very clear. When Liz and I met with the congressional staff, they wanted to make sure that whatever we did, there would be follow through on the recommendations. They were zeroing in on it because that's where their money was, on the SAMP. They just wanted to make sure that there would be follow through. That's where they moved their funding, so they were narrow on that. So, this kind of thing, if it's done well, should help. We have to get a lot of policy people, we have to get people from Omaha and wherever.

**Roy Aserlind:** I'd like to reiterate a point too. Every recommendation should be accompanied by some type of graphic or picture, otherwise it just becomes an abstraction, and everybody interprets an abstraction within their own frame of reference.

**John Bailey:** My only hesitation, I don't disagree with you, but the graphic might be narrower than the recommendation. It might give someone a sense that the recommendation is only for a specific situation. And at the last meeting, we were talking about some general ones and specific ones, and we were splitting them out. A picture is worth 10,000 words, but it may not be the right 10,000 words. I think on some of the recommendations we spent a lot of time to make sure the words fit a broader sense, so that's my only caution.

**Liz Galli-Noble:** John, if it's all right with the Task Force, could we solidify the subcommittee members, so that that subcommittee can meet and discuss some of these issues?

**John Bailey:** The Conference Subcommittee is you, Duncan, Bob, and Roy.

**Liz Galli-Noble:** And then, may I also ask the Task Force if it would be all right to poll them on dates that are not workable; so at least we have some sort of a base to work from? Are we shooting for 100 percent attendance by the Task Force members?

**John Bailey:** I think we need to get some sense of the agenda first, which I think may help define some of the time restraints. If it's determined that field trips are a non-issue, then I think you can go later in the month. I think that is a very valid point, because we don't have that. It was recommended that we do some field trips, but the note we had today said that the Governor would be there that one night, which means she isn't going on the field trips. I'm not sure? I think getting a general layout of what we're going to do will help define these things. Are we going to do field trips? Are they valid? Are we really going to be looking at things, starting with the recommendations? Most conferences are trying to bring people together to do what we've been doing for five years. We're going to start with recommendations, and then show them where there is some backing in science, or the lack of, or why we need these, I don't know? But I think it is different because a lot of times you're bringing people together to resolve things, which I think the Task Force has done for a long time. But we've got to get Duncan to work with us on the agenda.

**Deb Corbett:** I thought you might like to consider a different approach to what you are trying to do, and I don't claim to have a clue about what you're trying to do, but you say you have the Governor's availability for one night, for one day of your thing you want to do. I would suggest that you might consider having the Governor at the close, instead of at the beginning. That way you can begin to broach the subject of these recommendations, take the time that you have available to have your breakouts, your field trips, whatever, and have all this activity culminating in a summation, which would have the Governor's full attention and also a succinct presentation at the following period, I mean the preceding period.

**John Bailey:** I understand that. Thank you. I think we get an agenda and find out what we need; you're going to have to get moving fairly soon, to realize what kind of facility will or will not work to facilitate that. I think that's a valid point.

**Liz Galli-Noble:** So then my next question is, “Will we come back at our next Task Force meeting, to discuss this further?”

**John Bailey:** Let’s talk about meetings. We have a meeting set for July 15<sup>th</sup>. I’m wondering if we shouldn’t add a meeting every week in July except the first week? At least have them scheduled. Then if we move fast we don’t have to have them all; but my sense is that we’re going to need a lot of meetings. So how about July 8<sup>th</sup>? I know some people cannot make that, but one of the reasons we’re going to have it, is that we will still do the floodplain mapping presentation on the 15<sup>th</sup>, and that’s set. Are people okay with July 8<sup>th</sup>? July 22<sup>nd</sup>? If we don’t get some space between these, we cannot get the minutes done.

**Brant Oswald:** What days of the week, John?

**John Bailey:** These are all Tuesdays. Then also July 29<sup>th</sup>. That leaves us three weeks to finish.

**Andy Dana:** I’m gone the 29<sup>th</sup>, but that’s fine. You won’t get everybody.

**John Bailey:** I just wanted to get them down. If we don’t have to have these, we’re not going to have them; but I think if we don’t get them into people’s calendars, we could be in deep trouble. Any other business?

**Kelly Wade:** Can I ask you to clarify which nights you just picked? All of them?

**John Bailey:** Yes. July 8<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup>, 29<sup>th</sup>; they are all Tuesdays.

## **V. Task Force Recommendation Deliberations**

**John Bailey:** There are a couple of new faces here tonight, so I just want to go over our *Steps for Formal Action on Task Force Recommendations* (see Attachment A). The first step is a general discussion. The Task Force members will speak first, then it’s opened up to the public; and if you’ve been here for previous meetings, it’s been a little looser than that. There will be a conclusion of that when we move into Step 2. In Step 2, the Chair will reread the proposed recommendation, then we will ask for final concerns and questions relating to that recommendation, but only Task Force members may speak in Step 2. There may be some discussion, but if the recommendation fails to pass by consensus, we then move back into Step 1. We do move back and forth through this. There is a Step 3, which is going to happen sometime later, where the recommendations that you see that we’ve accepted will be formally adopted as a package. At the last meetings, the Task Force finalizes a complete set of recommendations to be forwarded to the Governor, Task Force members may not propose new recommendations, but may propose modifications, amendments or deletion of any of the previously adopted recommendations in Step 2. So, there is a Step 3 where we can go back and combine some, delete some, but we can’t add new ones. And in that step, it’s only Task Force members that can participate. But tonight we’ll move in and out of Steps 1 and 2. The floor is open. Where did we end with you last time, Brant?

**Brant Oswald:** My proposed recommendation was tabled. I’d be glad to start. I’d like to leave the recommendation that I proposed last time, tabled: [“We restrict, or strongly discourage, any new development in the flood plain.”] At least for the time being; not that we may not come back to this in some other form.

I do have one recommendation that might be a little bit wordy, so I think maybe the best thing I can do is hand this over to Kelly.

### **#1. Proposed Recommendation by Brant Oswald:**

“All permitting and/or management decisions (including the SAMP) must allow continued natural function of the flood plain, including but not limited to: connectivity between the river channel and the flood plain; regeneration of cottonwoods and other riparian vegetation; and maintenance of side channel habitat for spawning and juvenile fish.”

**Brant Oswald:** I think we may come to some of the same issues that we were talking about at the end of the discussion we had last time, but I took the advice of the Task Force and tried to go about this in a different way. The issue that I was trying to get us to last time, as John said a number of times, is that we need to let the



science drive the rest of the process. What I'm trying to get at with this recommendation is to get us back to that point. I recognize that there is some wordsmithing here that may need to happen, but what I've used as a cover term here to talk about natural function of the flood plain, I think are issues I hope that all of us share. I thought this would give us a way to start looking at this, that whatever happens from now on, we need to recognize how the river and the flood plain work, and that our permitting management take that into account.

**Robert Ray:** I guess I was going to broach the subject, looking at the discussion for flood plain management. One of the thoughts that came to my mind is that, from a water quality perspective and more specifically from a non-point source perspective—in other words, something that doesn't come out of a wastewater treatment facility or a conduit of water—that what needs to happen, in order to continue to provide the beneficial uses associated with the Yellowstone River, management, comprehensive management decisions, need to be looked at, examined, and basically moved through a process to a point of having some sort of strategic framework for the agencies and decisions on riparian and floodplain areas.

**Andy Dana:** Brant, I understand permitting decisions. By management decisions, do you mean that this is a recommendation to the agencies or to landowners who may make decisions that affect the riverbanks, or cities?

**Brant Oswald:** The recommendation was written with regulatory agencies and municipalities in mind. But I hope that what we get to the heart of here is that these same natural functions, I would hope at least to some degree, are also things that many landowners would embrace. I hopefully picked issues that are important to everybody. But the idea behind the recommendation was something directed toward the permitting agencies.

**Andy Dana:** I guess one other observation is, and I'm not sure I have anything to change, but this recommendation assumes that the flood plain is functioning naturally because it says, "...continued natural function..." and certainly in some places it isn't.

**Brant Oswald:** I would agree with you that there are areas where natural function has been impaired, and I guess whatever wordsmithing we would do would be okay. I think certainly the spirit of the recommendation was that we not move backwards.

**Andy Dana:** Would something like, "should respect the natural function of the flood plain," work? I'm not sure that's right, but...

**John Bailey:** What do you do in Livingston? How do you apply this through Livingston?

**Brant Oswald:** Well again, I've been trying to think of one recommendation that might apply directly to Livingston. My only comment was that my idea with this is that, as we go forward, the permitting and whatever management goes on, doesn't allow us to move backwards. I think you're right that a lot of changes could be made in Livingston that would improve things, and maybe we do need some wordsmithing. Bob, what was your comment, "that permitting and management decisions..."

**Bob Wiltshire:** I forgot what I said. What about, "...must not reduce the natural function..."

**Laurence Siroky:** "...maintain the existing function..."

**Brant Oswald:** I guess in all of this language, the spirit is that we would probably like, in the long run at least, to maybe fix some places where we don't have natural function.

**John Bailey:** Wouldn't that be a separate recommendation?

**Brant Oswald:** In the interest of discussion, the change that was suggested would be "...including the SAMP, must not reduce natural function of the flood plain."

**Jerry O'Hair:** On the surface, I guess I'm not really too concerned about this, but as a landowner and representing landowners up-and-down the Yellowstone River, I particularly have some problems with just allowing the river to run willy-nilly all over, just because it is so-called "natural." And I think it is maybe a little

different approach than the other recommendation you had, but I think it still is putting the burden on the property owner, and he's the one that's going to stand the brunt of this thing.

**Bob Wiltshire:** Jerry, I'm not disagreeing with that, I'm just curious who else could bear the brunt?

**Jerry O'Hair:** I'm not real sure that anybody has to bear the brunt, but in some circles they say that the agricultural land is expendable; and that's what I consider some of the river bottoms up-and-down the Yellowstone as being agricultural land. And if the river is just going to be allowed to wander from one side of the valley to the other, then there is definitely going to be some impact to some landowners. Whether we like it or not, people are still first.

**Andy Dana:** I think this is a really great effort. What I'm concerned about is the black and white "must not reduce the natural function of the flood plain." There are circumstances where I think there are likely to be tradeoffs that—I think it gets to what Jerry was saying—the community as a whole will say "we need to compromise the flood plain, we need to reduce the natural function of the flood plain to protect legitimate social or political, or even environmental goals." I was looking back at some of our past recommendations, and I think the second one that Roy proposed, which we adopted, was "that future decisions be made only after thorough consideration has been given to the geomorphology of the river." And maybe a compromise would be to—I know it softens some of your language, but—change it to, "All permitting or management decisions (including the SAMP) must thoroughly consider the natural function of the flood plain," or "seek to preserve" or "seek to enhance" or something like that. But if you make it that black and white, I'm somewhat uncomfortable because of the social trade-offs.

**Joel Tohtz:** Andy actually captured some of my concern. When I first read that, my first reaction is to the word "must," and I'll tell you what I'm reacting to. It sounds draconian. Anytime you build into management options a limitation of what you can do, you actually are putting yourself in a place you don't want to be. There are some pretty mellow things we could do, and some pretty extreme things we could do that probably in our wildest fantasies we would never want to implement, but maybe we need to. And if you throw them out, you have created something that you didn't mean to do. So softening that language I think is wise. The other thing I'm having trouble with is "natural function," because I think what you're getting at here is not doing anything that alters the existing flood plain, which is different than saying anything about natural functions of flood plains. For example, if you put a dike in a flood plain, what goes on with the water as it overbanks is just a matter of physics. It will be a naturally functioning flood plain; it just will have an obstruction within it. So, it will function as a flood plain that has a dike, for example. I would want some clarification on what we're getting at here. When I read that, the spirit I like, but I think from a practical, on-the-ground point of view, trying to implement something like that, what does that look like to people who are in the permit reviews, for example? Or landowners who are making decisions about how to keep their calving grounds open? That would be a very difficult thing to deal with.

**Laurence Siroky:** A little background, I guess. In the State statute, "flood plain" is broken into two parts, the flood fringe and the floodway. And it's in the floodway that there's considerable restriction on building and how many structures, and it's the flood plain that building is allowed. Like I said, you can build a house in the flood plain, as long as the floor was elevated two feet above base flood elevation. There are certain minimums that the State statute has about what you can do in a flood plain, in respect to the floodway, the flood fringe, and Park County has adopted additional regulations. For an approved subdivision now, and Ed correct me if I'm wrong, that a house cannot be located in the designated flood plain. That's the new Subdivision Regulations, but of course there are subdivided lots already that existed prior to that, that will come in and affect things, will be locating houses in the flood plains.

**Roy Aserlind:** It seems to me one of the sticking points here is the tendency, or the potential, to give away the power of the landowner to protect his or her own property. This, to me, becomes an essential and a critical point: that any landowner should be allowed to protect his or her property if the situation warrants. Nothing capricious, just protection. Also, a point was made in our last discussion, if you will recall—someone made the comment, I'm not sure who it was—but if you put restrictions on an individual landowner on utilizing his land in a certain way, you are, in a sense, devaluating that land. I really appreciate the thought that has gone into it, the essence of it, the goal, but is there some way that private property protection could be worked into it. I have another thought too, and I even hate to throw this one out, but Joel used the word "draconian" and this would be

a draconian suggestion. The landowners along the river have bought their land, nurtured it, taken care of it, in some cases for several generations. I guess you should not abrogate their use of that. Now, what I'm really leading up to is, what would it be like to put a grandfather clause in there? Myself, I do not like to see more and more houses being built on the Yellowstone, or on the flood plain, but perhaps some codicil could be added that says "as of a certain date," it's a whole new ball game. When you, new buyer, buy this land, you have this to consider. These are limitations that you will probably face, limitations that I do not think should be placed upon some of the existing landowners.

**Scott Bosse:** I agree with the spirit of your comments, Roy, and I too believe that there should be some sort of grandfathering in. My concern is that, if you grandfather in all property owners, there's a heck of a lot of land that is subdivided, and a lot of parcels along the Yellowstone River, that haven't been built on yet, that could still be built on under such a grandfather provision, as long as it has maintained the same ownership. That's my big concern here. So I would suggest that any sort of grandfather clause refer to any land within the flood plain that does have existing structures. In other words, if a citizen has a parcel of land with an existing structure in the flood plain, that they be able to protect that; but if they don't, then you establish a date, and from that date on, they would shift to the new rules.

**John Bailey:** Brant, permitting is one thing and management decisions seem to be something different. Doug's place, with all that bottomland that I'm assuming is in the flood plain; the water certainly ran across it in 1997. You're talking about "natural" and then "riparian," does that mean that he can't farm? That's a management decision of his. I'm wondering if permitting is basically happening in that line between the private and public ownership. Management decisions seem to me to be getting much broader. The discussion here may be on one side or the other of that; and maybe you need two recommendations: one deals with the broad sense and one deals with the narrower sense.

**Brant Oswald:** To speak to that, the reason I added management decisions was, again, from the beginning, as we've tried to talk about some of the general issues, and that is the intent of this, to make it general, was that there might be some regulatory decisions that would be made that would not necessarily be strictly done by permit. So, I'm not necessarily wedded to that language. The idea here was mainly the regulatory side, but that there might be regulation that would not necessarily be considered permitted—County floodplain regulations, for example. This was not intended to be speaking to an individual landowner making a management decision.

**John Bailey:** It doesn't say that. It says, "management decisions." If you said, "government management decisions" there may be a different discussion here; I don't know? Without that change I don't know that people can accept this; landowners are feeling that they may be limited in their actions.

**Brant Oswald:** I've got this in, and I'll see if I can keep these thoughts in order in my head as I try to vocalize them. Maybe one thing we could say would be, "permitting and/or regulatory decisions," and see what our discussion is there. The second is the discussion we had about taking out the draconian language of "must not reduce." I'm not terribly wedded to that language either, because really, a lot of what I was hoping to accomplish with this recommendation is to see if we have consensus on these general issues. I was hoping that—rather than getting back to some of the specific issues we talked about—this recommendation doesn't engender any problems with worries about property rights. Other discussions might, but all this is intended to do is to make sure that we all, in some sense, believe in the science that we've been looking at for the last year. I've tried to pick a few that we've seen some science on, as to recognize that there are some natural resource goals that we should have, and that as we go forward, the permitting process needs to recognize those resource goals.

**Dave Haug:** I guess I agree in principle with a lot of things you say, in that we do need the flood plains, but I also agree with Joel. We're on the same 310 permitting board, and it's really hard if somebody has a goal in mind, that basically their land is sacrificial; there's a lot of question in my mind of different factors going on there. I personally don't own land in the Yellowstone flood plain, I own a considerable amount out of the flood plain. But I do know a lot of people who own land in the flood plain, and a lot of them have told me over time, and even recently, that they do not want to lose value or be limited. In a lot of ways I have to agree with them also. Even grandfathering to a certain date on small tracts, if somebody has a five- or 10-acre tract on the river, that they paid \$100 to \$200,000 for, and he doesn't build a house on it, and all of a sudden this tract is virtually

worthless to him. So, who pays the difference there? Who pays the difference on some of Jerry's land, if it's out of the floodway but some time his family could sell and tract out, and all of a sudden it's devaluated? There's a property right being taken away. I just have a lot of questions about whether we want to get into this totally or not; because when you take a property right away from somebody, I firmly believe they should be compensated for it. I don't believe that we should be able to legislate somebody losing a land value, because I've seen it happen to me, and I've seen it happen to other people and I don't want any more to go on unless there's actual cash compensation. I really question this.

**Laurence Siroky:** I guess the floodplain statute that the State of Montana is operating under was adopted in the early 1970s and our regulations fall back to that and describe certain minimum requirements for building in those floodways, or not building in those floodways, and what building could be allowed in the flood plain. If your recommendation is to simply enforce and follow the existing floodplain laws, then there is nothing being "taken" in that respect. That's always open to debate. But in my respect, this is no more than what we have now in the statutes. Are you saying enforce what we've already got? That might be another way of saying it.

**Brant Oswald:** To speak to that and what Dave was just saying, I was trying to write a recommendation that I thought would be a preface for any further discussion. I think the whole issue of respecting private property rights while allowing some of the natural river function seems to be our charge; and that's finding creative ways, as you said, if a private property right is compromised, that that landowner needs to be compensated. Part of what I would hope that the end result of all this is going to be, is for us to try to come up with some creative ways in which we can allow that to happen. I don't advocate taking away anybody's private property rights. What I'm trying to do is see if we really have consensus that these goals of allowing the river to work in a somewhat natural way is something that we all agree on. I agree with you perfectly that we need to find ways that there is compensation. Maybe find ways to address, as Jerry had said, he's worried about making sure that his property isn't devalued in case he needs to borrow against that property. I think where we go from here is to try to make sure that we can respect those private property rights at the same time as we preserve what we have on the river. I was hoping not to have this recommendation get us bogged down in that discussion. I think that needs to happen, but I was trying to get us, to some extent, all on the same page before we go into that discussion.

**Roy Aserlind:** Right now, we're just kind of flock shooting it seems to me. Perhaps, and I'm just tossing this out to think about, we need to recommend the establishment of an adjudication board. This would be a State-monitored adjudication board made up of persons who have extreme respect for the river, the flood plain, natural processes, and likewise. Persons who have good legal background, and persons who also are well acquainted with the trials and tribulations of the individual property owner.

**Scott Bosse:** John, I wanted to address one of your concerns, and I think I share it. It might be a good idea to separate out the future from the present by limiting this recommendation to the development of the SAMP, and that maybe gets away from some of these contentious private property rights arguments. One suggestion I might have and we could include a lot of the same language here, is "the development of the SAMP must result in increased protection of the river by maintaining..." and everything else stays the same. That way, you don't address each and every individual permitting decision, but you're giving the Army Corps of Engineers guidance. As they develop the SAMP, they need to maintain and enhance those values that Brant laid out there.

**John Bailey:** I'm wondering if the word "hydrological" would be better than "natural." When I hear "natural," I think of Yellowstone Park. Natural is never well defined. It's a concept we talk about, but when you try to define it, it gets really difficult.

**Brant Oswald:** I don't have any problem with that, John, and actually, again, that was one of the things I threw in, the phrase of "natural function," thinking that we would probably need to wordsmith that a lot. I think maybe a more encompassing term, though, may be "geomorphological." It might be better than "hydrological."

**John Bailey:** Sure. George?

**George Jordan:** In my mind, you've got the current function of flood plain, and some potential desired future result. So maybe just the word "current" function, meaning we're not going backwards and doing more damage; we're maintaining what we have. So, maybe the word "current" in front of "function" would be another option to

wordsmith that. Also, maybe somewhere in there would be something like, “strive to maintain current function of the flood plain and/or improve where applicable” and then go into, “...connectivity between the river channel...”.

**Bob Wiltshire:** I'd like to back up to addressing this natural geomorphological, or whatever. I think that most of us have some sort of an intuitive idea of what we mean there. We've heard all these science reports that say the Yellowstone is healthy because it's got these processes going on. Maybe we could ask our Technical Advisory Committee to give us some words to put in there that would be accurate and acceptable to them that would convey our points.

**John Bailey:** Brant, it's your recommendation.

**Brant Oswald:** To speak to a couple of the last comments. I certainly have no objection to “current geomorphological function.” I think we actually have several things under discussion. One comment that Scott made, which I think may be germane, is that we really start with the development of the SAMP. One of the things I think the Corps is hoping to get is some feedback from us on what we think, where the process needs to go. If we would change the first part of that recommendation to be the...

**Scott Bosse:** Brant, would it help if I repeated it?

**Brant Oswald:** Yes, go ahead.

**Scott Bosse:** What I had suggested was “the development of the SAMP must,” you could use “must” or “should,” but I think “must” is probably better, “the development of the SAMP must result in increased protection of the river by maintaining and enhancing...”; and then everything else is the same, starting with “connectivity” about halfway through that paragraph.

**Brant Oswald:** My sense, Scott, is that “increased protection” is going to make some people nervous around this table. And one of my real goals here, frankly, is to get consensus on some of the basic ideas that we're talking about, and I don't think that is necessarily going to get us there.

**Allan Steinle:** This has been an interesting discussion to listen to, as everybody wrestles with the trying to balance resource protection and resource utilization. Welcome to regulatory. I wouldn't recommend limiting this recommendation to the SAMP. It's already in there and we'll certainly give it full consideration and full weight, whether we're part of the picture or it's limited just to the SAMP. When it comes to floodplain management, we're certainly not the full picture; we don't regulate flood plains, so lots of levees could get built that don't need a permit from the Corps of Engineers.

**Andy Dana:** I'm going to propose a compromise that may not make anybody happy, but might give something to everyone, and that would be to reword this by saying, “All permitting and/or regulatory management decisions, including the SAMP, must recognize and respect the importance of the geomorphological function of the flood plain, including but not limited to...” and so forth. And then I would propose a second complementary recommendation, which would be, “All permitting and regulatory management decisions, including the SAMP, must recognize and respect the public and private interests in protecting private property rights and important social, economic, and natural resources existing on or near the flood plain of the Yellowstone River.”

**Brant Oswald:** The first amendment that you made I have no objection to. I think we'll have more discussion on the second recommendation; that one is yours. What was the wording again that you had for us?

**Andy Dana:** It would be, “All permitting and/or regulatory management decisions, including the SAMP,” I would prefer, “should recognize and respect the importance of the geomorphological function of the flood plain...”.

**Chuck Dalby:** I'm not sure that's a good choice of words. I think it is too restrictive. One way to get around that would be to say, “preserve natural function” and then define it with the footnote with an explanation that when you're talking about the whole flood plain, you're really talking about the geomorphic, the hydrologic, and the biologic function. It's a whole complete chain. Use “natural function” and then define that. Or alternatively,

if you want to say it in just one word, you could say, “the current alluvial function of the flood plain,” because that encompasses everything that a river channel does.

**Andy Dana:** I propose just striking any adjective; and just say “the function of the flood plain.” Just to explain why I would offer the second recommendation, I think that would make the landowners feel a bit better about endorsing this proposal. Because it would not only recognize the importance of all of these public values, but it would also recognize—it would encourage the management agencies and the permitting agencies—to recognize that there are private property rights out there as well. It strikes a balance between what you’ve been talking about, and what Dave and Jerry and I have some concerns about too.

**John Bailey:** So Brant, what do you want to do about the one word?

**Brant Oswald:** I was always trained as an editor to be as economical as possible. I think maybe Andy’s last comment, that we simply make that “recognize and respect the function of the flood plain,” might be the cleanest.

**Bob Wiltshire:** I’m very uncomfortable with changing that “must” to “should.” I’m not saying they have to make their decision only on that reason, but I think they must consider it.

**Laurence Siroky:** I might be beating a dead horse, but if I was the Governor or a legislator looking at this, looking at changing permitting requirements, I would ask, is this more or less than what we have now, in terms of floodplain regulations?

**John Bailey:** I’m wondering if it doesn’t address what Jerry has brought up many times, what he calls the “double standard.” That for some people these things apply, and for others they don’t. I think there has been a general feeling around the table that they like the gist of this; the problem is the wording. And I think it has to do with those people living here not seeing the rules applied equally. You can ask Brant, but that certainly is the sense I have.

**Jim Barrett:** With all due respect, Brant, and the people who have been editing this, it seems to me that a recommendation that comes out of this body is not going to be law; it’s going to be a recommendation for future deliberations. And as we keep watering this down, it looks like every other regulation we’ve got that doesn’t work right now. So I agree with Bob, that when it says “should” that just washes down to “okay, well maybe,” and if we start, in the language, trying to interpret what private property means, and the various interpretations of what private property is, and different circumstances and how it conflicts with the public good, I don’t think that can happen in a recommendation. Actually, Brant’s original recommendation seemed to just get right to it. But it just seems to me that it’s getting watered down here and it’s getting ineffectual.

**Chuck Dalby:** I share that observation. As I just quickly read through this, it almost reads like it’s a truism. All permitting and regulatory management decisions should recognize and respect the function of the flood plain. I think everybody agrees on that.

**Andy Dana:** That’s why we got consensus on it, Chuck. I don’t have a problem with changing “should” back to “must.”

**Brant Oswald:** I think it should read, “must.”

**Joel Tohtz:** I began reading this as an “anti-muster,” and I think I’ve converted back; but I want to explain why. “Must” is good because what it does is it doesn’t actually limit the options you have in managing a problem on the river, but what it does do is it places the greater burden of proof on the persons who are going to do something that may compromise the natural functions. What it really says is that if we build the Great Wall of Livingston, we’re doing it on purpose; we’re not kidding ourselves about what it is doing to the function of the river and so forth; and we know that because we know how the flood plain functions and when it’s disrupted. I guess what I’m saying is that it doesn’t actually prohibit disrupting the flood plain, it just means that if you do that, you’re doing it on purpose and you make that exclusive; and I like that sort of thing, sort of truth in advertising. If you really mean we can no longer disrupt the floodplain functions at all, my job is easy because on permits we’d just say “no,” and we’ll all go home. But I don’t think that’s really what we’re getting at. I also

want to go back to the science leading thing. The thing that struck me about all the studies was that no study contradicted another study. That was a very big surprise to me. They were all consistent with each other—looking at the same things from very different perspectives. And one of the lessons that came through to me was that the river is basically unimpacted now. And that means, what a natural river looks like is diverse, and anything we do that reduces that—anything that we do that reduces the complexity and the diversity of the system, both physical and biological—compromises the ability of the river to sustain itself through time. So, I think all of this is wrapped up in here. So I'll go back to supporting the word “must.”

**Jerry O'Hair:** I guess my concern with this is those landowners that have been fortunate or unfortunate, whichever it is, to not have changed their flood plain or left it pretty much as it is, are going to be livid. The flood plain, where it has been changed—for instance, in cities, towns, and where bridges and highways and so forth have been built—there's not going to be any change. Yet the impact of a bridge can have an effect either downstream or upstream of landowners, and they're going to be impacted. I'm really concerned about this recommendation.

**John Bailey:** Are you concerned with it standing alone, or in the great sum of all the recommendations, which we haven't seen yet? We came to almost an impasse once, and when we left the meeting I reminded people that we have a third step. Andy has another recommendation that I think he is going to propose that may address some of your concerns. I just ask the question, in that the recommendation can go away later. And I wonder, in the totality, how it fits? They wanted to wait for a meeting to wordsmith, and afterwards, when I went home, I thought that maybe we could have wordsmithed it in the third step, once we saw how everything else went. It worked that they did that. I don't have a problem if you have a problem, I'm just wondering if other things may move around that makes it more comfortable. I think Andy has one, but I won't even try to remember what it said.

**Andy Dana:** I can put it up if you want.

**John Bailey:** I'm trying to understand the difficulty you're having.

**Jerry O'Hair:** The difficulty that I'm having with it is that it says that flood plains that are undeveloped or mildly developed—there really aren't any flood plains that are natural or what they were 100 years ago—but those flood plains probably can't be changed. Yet there are flood plains like through the City of Livingston that have been changed, are different, and will be different forever. I think that you're asking the property owner that has unchanged, or little changed, flood plain not to do anything to change his flood plain, and I'm very uncomfortable with this recommendation.

**Chuck Dalby:** I'm not so sure. Because as I read this, it's not as strict as not allowing any modifications of the flood plain. It seems more like it recognizes the functions of the flood plain, and I think a regulatory agency might be able to interpret this to limit certain types of floodplain development, but with those following three criteria. That seems to be the real standard, that you can allow for some type of development—a certain level of development—as long as you maintain the connectivity between the river channel and flood plain, regeneration of cottonwoods, etc. That then becomes a regulatory decision. In some cases maybe there will be certain developments that are not permitted. The other thing I see in this is it seems to be sending a message to the regulatory agencies as well, that they need to be pretty careful about how they do things in the Upper Yellowstone, and that they really need to go the extra effort to recognize and respect the floodplain function.

**Daryl Smith:** I guess I'm a little concerned about this too, as far as property rights. As John said, Andy's got another recommendation coming up, but there's no guarantee that that is going to reach consensus and pass either. Jerry's made some good points about landowners that are upstream and downstream of bridges, and the effects those bridges have on them, and because something like that is in the river, the landowner can't protect his property against something else that's in there causing the problem.

**John Bailey:** Just a comment. Recommendations that reach consensus now are not necessarily going to be included in the final version. In Step 3, the Task Force goes back and looks at all of the recommendations, and we can modify or delete them, but we can't add new recommendations; so that's what I was asking earlier. I certainly understand people's hesitation on a certain issue, but other things could take shape and help modify

that. I'm not asking someone to buy into that faith right now, but what we do now is not final. Those recommendations could all be thrown out in Step 3. I doubt that, but nothing is final until the final step of our process.

**Daryl Smith:** If somebody is uncomfortable with this recommendation, then in Step 3 anybody on the Task Force can say that they're uncomfortable with it and get it revoted on?

**John Bailey:** Well, it has to go through a consensus process, and there's a question if one can actually stop it; but if you've watched the way we work, one person has always had a very loud voice. The system was set up so that we could make recommendations, and when we saw them in totality, we may want to readjust them, delete them, or whatever. And, also, a Task Force member may hear from the people they're representing that they really have a problem with a particular recommendation. They have one more opportunity to try to either fix it or delete it. That was the discussion we had when we set up our process steps. I only bring this up because a recommendation can reach consensus tonight, but that does not mean it will be in the final package to the Governor. It has a good chance, but it still could be deleted. That's all.

**Lionel Dicharry:** While we're still wordsmithing, and I certainly like the progress that's been made with the recommendation at this point, I'm much more comfortable with it than when we started. Being a non-scientist, I would ask Chuck Dalby, because I've studied his latest presentation again recently, and I'm just wondering if we want to be a little more cautious in using the term "function of the flood plain?" It sounds like a generic, very generic kind of statement that I don't know that anyone can use. My suggestion, and I don't know that this does the job, would be to use "must recognize and respect the existing function of the flood plain." That gives you something to look at. I had a big problem with the words "current" and "natural." First of all, there are no natural flood plains on the Yellowstone River, as you pointed out in your geomorphological study; every stretch of the river has been modified to some degree, which means that modified riverbank has had some effect on the flood plain adjacent to it. So that's the spirit in which I'm offering this suggestion, and I would pose this to Chuck to see whether that might be a suitable wording compromise.

**Daryl Smith:** Are the new floodplain maps in yet?

**John Bailey:** No. They'll be made public at our July 15<sup>th</sup> Task Force meeting.

**Daryl Smith:** I don't really see how you could really even vote on this at this time if you don't even know what the flood plain is. If the maps aren't done yet.

**Lionel Dicharry:** I would just follow Daryl's statement up with what I mentioned. I think the word "existing" does something for you there, because whatever the floodplain maps show would be existing today. After next year's flood, the existing would be something quite different perhaps.

**Andy Dana:** My reaction to waiting for the maps is that the maps are a political document. They're not science. There's a scientific meaning to the word "flood plain," which is independent of what the regulatory agencies determine is the flood plain. I'm not sure that this language binds us to the floodplain maps. Secondly, I'm not quite as uncomfortable as maybe you, Daryl, or Jerry, with this language "must recognize and respect the function of the flood plain." It doesn't mandate an outcome. It says that the agencies need to look at the functions of the flood plain, the ecological functions of the flood plain, as defined below: connectivity between river channel and flood plain, regeneration of cottonwoods, and maintenance of side channel habitat. And as Joel said, it essentially raises the bar for permitting decisions made, that if someone comes in for a 310 Permit or a Corps permit, then that person needs to address floodplain concerns. I think that what we've heard from the science is that that is something that probably needs to be done if we want to keep this river as it is. But it doesn't mandate an outcome as far as I can tell. It mandates attention to the importance of the flood plain, the ecological flood plain.

**Chuck Dalby:** I just want to quickly respond to Lionel's comment, which is that I think "existing" is fine, and it does add some specificity.

**Deb Corbett:** I just want to say, as an observer, what a fabulous organization you people have here. It's a very thoughtful group, you really try to work together; I love that. It gives me new faith, and now we're writing



language to be looked at by legislators. I wanted to agree with someone else who made a comment about the language raising the bar for regulatory agencies; and indeed, I think that is what we need as the public, whether we are property owners or not. It's to say we, as the public, would like you, the agencies, to be accountable for looking at these issues. And I would propose that in your language here to address the concerns of major property owners along the river, you might use these things that have already been presented and add the consideration of property rights to it.

**Jim Barrett:** The more we look at this it's like looking at a word that pretty soon it looks like it is misspelled. The idea of what a flood plain is, and what a floodway is, and what a riparian area is, whatever; it seems to be that that word is specific to a certain linear dimension in a valley. Whereas, maybe it would help Jerry and the gentleman here, if it said the river functions or something, so that would include bridge abutments that are not necessarily in the flood plain but they are causing problems. So that when they're permitted, is the DOT here, they need to be scrutinized a little more as well. That might include all those things so it doesn't look like it is disturbing, picking on a particular property owner, large or small.

**Bob Wiltshire:** In response to Lionel, and I forget your exact word "current" or "existing." One of the things that we heard repeatedly from the researchers is that we do not know at this point in time what the impacts are of all the structures that were put in following the 1996 and 1997 events. And I would hate to say that we want to stick with the "existing," until we know what the existing is.

**Brant Oswald:** Maybe one final comment to Jerry and Daryl. I think their comments were getting back to the double standard issue—that there is the feeling among some landowners that things effect them that municipalities or the DOT or other entities may not have to do. And all I would say is that I was trying to pick language that was general enough to address those kinds of concerns. I was a little surprised by that reaction, because I was making a definite attempt not to put language in here that would make you nervous for those exact reasons. All I'm hoping that we can do is set some sort of groundwork for us as we go forward, but we recognize that these sorts of resource goals are important to all of us, whatever interest group we happen to belong to.

**John Bailey:** Other comments? Are we ready for Step 2 on this recommendation? Hearing no comments, we'll move into Step 2. The Chair will read the proposed recommendation, "All permitting and/or regulatory management decisions (including the SAMP) must recognize and respect the function of the flood plain, including but not limited to: connectivity between the river channel and the flood plain; regeneration of cottonwoods and other riparian vegetation; and maintenance of side channel habitat for spawning and juvenile fish."

Discussion or further concerns? Okay, how do we feel about this?

**Jerry O'Hair:** I can't accept it.

**Michelle Goodwine:** I'm not sure I can accept it the way it's still written either.

*Dave Haug indicated that he was not comfortable with the recommendation.*

**Roy Aserlind:** I can accept it.

**Brant Oswald:** I'm all for it.

**John Bailey:** It's lacking consensus. Three people find it unacceptable. So we'll move back to general discussion. The people who are against it, you may want to define the problems. Michelle?

**Michelle Goodwine:** My reluctance is with the "connectivity between the river channel and the flood plain," that kind of disturbs me, as does the "including, but not limited to," that seems really broad. I understand the spirit of it and that I'm in favor of, I just think that if legislators were to look at this in determining new legislation outside of what we already have for existing floodplain regulations, that it could be interpreted differently than the intent is here tonight, and I do see it as a takings issue, potentially.

**Dave Haug:** I guess I agree with Michelle. Even though I've come to really appreciate the flood plains, more so than when I first started on the Conservation District, and through all the information we've gotten here, but there still has to be in my mind a line drawn in the sand as far as the property rights and devaluation.

**Michelle Goodwine:** I guess as Laurence mentioned earlier, we already have existing floodplain regulation and if what we are trying to do is just restate that we're in support of what the existing statutes are, that's one thing; but to go beyond that, I think that's where it becomes a takings issue. What is already on the statute is not going to consist of additional either a devaluing of property or the taking of any property rights, because it's already in there. This, to me, does not identify that, we're just supporting an existing legislation.

**Jerry O'Hair:** I don't know, it's a personal thing with me. I went through hell in 1996 and 1997. And two or three years after that time I built a dike, it's still there. I guess if I was to look at this recommendation as it's written, that dike should come out and that one line down there with "be captured by the river," and it would end my enterprise there at the ranch. So I've got a real stake in this thing; and regulations are bothering me today and maybe they shouldn't be, but they are, and that goes back to the County regulations. Every time I come to a meeting I learn that there is a new County regulation; and I sat through many meetings for the County Floodplain Regulation thing; and then, all of a sudden, the meetings stopped, there weren't any more meetings, and there was a set of regulations drawn up, and here they are. It wasn't anything like we had discussed at the County level. So to put more regulations on private property is just getting difficult to live with. It's a personal thing, that's all.

**Andy Dana:** I'll try a different way to meld these two competing interests.

**#2. Proposed Recommendation by Andy Dana:**

"All permitting and/or regulatory management decisions (including the SAMP) must recognize and respect:

- a. the function of the flood plain, including but not limited to: connectivity between the river channel and the flood plain; regeneration of cottonwoods and other riparian vegetation; and maintenance of side channel habitat for spawning and juvenile fish; and
- b. the public and private interest in protecting private property and important social, economic, and natural resources existing on or near the flood plain of the Yellowstone River."

**Andy Dana:** As Allan said, he does this every day, so I'm not sure this accomplishes a heck of a lot more than they already do, but at least it makes a statement both ways. The function of the flood plain is important, and private property rights are important as well. An editorial comment too: this other addition is something that Doug Ensign has been talking about, needing to get some special recognition of the importance of protecting private property rights. He couldn't be here tonight, so I was thinking about trying to do some sort of a recommendation on his behalf, and I know Roy has expressed some interest in that too. This tries to get to the importance of protecting private property rights. So, have at it.

**Michelle Goodwine:** If this still accomplishes what Brant was intending to propose, I can live with this, and I hope it maintains the spirit that Brant's original recommendation was also intending, but I really like what Andy's proposing here.

**Bob Wiltshire:** I'll ask Allan, just to pick on someone, does this change anything?

**Andy Dana:** Does anything we do here change anything? I think it does change it by drawing attention to the SAMP process, that these are important, both of these values are important in the considerations. They may have been factored in already, but it highlights it to a certain extent.

**Bob Wiltshire:** It seems to me though that anytime when a regulator regulates, they're infringing on private property rights. Is that incorrect?

**Andy Dana:** Well, anytime a landowner gets a permit to put in a bank stabilization project, they are arguably infringing on the public; so it cuts both ways.

**Bob Wiltshire:** It seems to me that somehow here, we have to try, if we can, and maybe we can't, to give some guidance to the regulators in terms of what we, as a community, what sort of direction we're trying to move in.

**Andy Dana:** I don't see these as opposing directions in one recommendation. They are equally important directions. You can't make decisions in isolation, you can't focus simply on the function of the flood plain, you have to take into account the impacts on private property rights as well, and vice versa. You can't focus simply on private property rights, you have to balance the function of the flood plain. I see them as complementary, as opposed to conflicting.

**Bob Wiltshire:** Then why did we commission all these science studies and spend all this money on science, if we don't want to allow the science that we discovered to be one of the prime criteria as we move forward?

**Andy Dana:** One of those studies was socio-economic.

**Bob Wiltshire:** Exactly, and I don't see any reference here to that having a bearing.

**Andy Dana:** Protection of the public and private interests, and protecting private property, and the importance of social, economic, and natural resources. I read that as having a direct bearing, and directly drawn from the socio-economic study.

**Bob Wiltshire:** That implies that protecting all private interest is of equal value economically.

**Andy Dana:** No.

**Bob Wiltshire:** That's how I read it.

**Michelle Goodwine:** Let me just state that, based on the proposed recommendation that Brant originally stated, from what I gathered on that, that could be strictly interpreted to say that, in the event that somebody were to lose their home even due to fire, if they were in the flood plain already, that they would then not be able to rebuild. Currently, the way the statute reads is that they can build as long as they stay within the existing footprint. Strictly interpreted, the previous recommendation would not even allow for that. Is that correct?

**Bob Wiltshire:** Can I answer, Brant? That prior recommendation didn't mandate anything. The only mandate it said was that permitting agencies must consider these factors. It didn't say you can or cannot, or must or must not, do anything; except that you must consider these factors when you make a decision.

**Michelle Goodwine:** I appreciate the fact that it didn't mandate anything, but there is nothing in the previous recommendation that references the public interest or even private interests. It's more the natural cottonwoods, the juvenile fish, spawning habitat, and the connectivity of the flood plain with the river channel. There's nothing in there that references that, that's why I'm saying that can strictly be interpreted, in a strict form, to limit or even further restrict what the existing statute already identifies.

**Chuck Dalby:** I want to follow up on Bob's comment. I think what does make this a little bit different from business as usual, and I agree with Jerry and Andy and others that it is important to allow some flexibility and provisions for protecting private property rights, especially for agricultural operations. The Task Force should be doing everything possible to encourage keeping Paradise Valley in agriculture. While it is important to protect, or have the flexibility to protect, private property, the whole issue of cumulative effects, at least in part, is about minimizing the future need to protect private property in certain key areas. I think the reduction, to the absurd, here is to imagine a Yellowstone River 50 years from now with a trophy house every two-tenths of a mile down the river channel and wealthy landowners with the wherewithal to protect that property. I don't think anybody wants to realize that as the future of the Yellowstone. I think this discussion is great, I don't think we have all the answers yet, but we're getting closer and closer.

**Deb Corbett:** I really appreciate the addition of this language, because I'm dealing with government regulations in a completely different area right now. And it's been my recent experience that, when you give

them an inch, they take a mile. I'm talking about the HIPAA [Health Insurance Portability and Accountability Act] specifically, if you know what that is. It's a medical thing. I really appreciate the fact that you're saying "consider this, and consider that." If you only state the one thing, they will definitely not consider the other thing; because they do it all the time. Then you wind up with something like HIPAA, which really erodes personal rights.

**Scott Bosse:** I guess I just want to say that I'm really disappointed that the Task Force didn't reach consensus on this, because I think that Brant made a very sincere effort to accommodate everyone's interests and, as Andy said, no one got what they wanted exactly out of the original proposal; it was a compromise. If this recommendation as it now stands, just like Allan says, it would not really change anything. More people could inundate the Corps of Engineers with 404 Permit applications, GYC can file more lawsuits, the judge can say you didn't consider cumulative effects, nothing really changes with this. I would like to raise the bar to the Task Force. If there is one thing that all of the studies showed, including the socio-economic study, it was that the people of Park County and other people that enjoy the Yellowstone River, appreciate this river for what it is today. Not that they want to return it to prehistoric times, not that there can be no development, but we want to maintain existing values. To maintain existing values on the Yellowstone River in the future means that you have to increase the level of protection. The way we got here is because the level of protection wasn't sufficient to protect the river from being degraded. I guess I just want to leave it at that. This was really the first time that any sort of recommendation addressing the natural values of the river was advanced, and I'm just sad that we couldn't reach a compromise on it.

**John Bailey:** Scott, to get back to what Laurence said, he wasn't sure that it would actually change anything that's already in existing law. One of my senses is that I don't think the first recommendation is any different than this second one. I don't think either one really changes anything. I think what the Task Force can do is emphasize things that may already be in the law, but in the process, and that in a SAMP process, when they go to a public hearing type of thing, and people feel that they didn't address those, they could be brought up. I understand where some people have been through processes, they saw stuff, and what came out later they didn't like. I understand where that comes from. My own personal view is that the first recommendation, from my perspective, wasn't going to set any great agenda either.

**Scott Bosse:** I'd just like to respond to that. So many thoughts just went through my head that I forgot all of them at the same time. I think the original recommendation that Brant advanced was a step in the right direction. That's what the Task Force is doing. We're still at the beginning phases of the recommendation period. So what I expect is that the language in the early recommendations is going to be softer, the steps are going to be shorter, and hopefully, once everyone converses about these issues in a substantive way, that as we get along in the recommendations process, later in July and August, we can really start to tackle some of the hard issues, the proverbial elephant in the corner. I just don't think it is sufficient to continue business as usual on the Yellowstone River, and I think we can, at least at this phase of the recommendation process, take some small steps in the right direction. I think Brant's original recommendation definitely was.

**John Bailey:** So Brant, we haven't heard a comment from you on this proposal.

**Brant Oswald:** I guess I'd have to say that I'm also a little bit saddened to think that we weren't able to reach consensus on the first recommendation; only because I did try to take what I thought were pretty careful steps to make sure that I was not threatening anybody's private property rights. It does seem to me, in response to a couple of the comments that were made, if all we're here to do is make sure the current floodplain regulations are enforced, I'm not sure why we've sat through five years of meetings. We could have sat around the table at Martin's and sent a letter to the Governor saying let's make sure that all current regulations are enforced. It seems to me that we did see some need to change some of the things that are going on. All I was trying to do with the original recommendation was to try to lay some sort of groundwork for further discussion, and say that those values that I put there are important. I had no intention of proposing a hidden agenda that would require anything except recognition, and I think the language we ended up with is pretty soft, that we simply ask, require, that the regulatory agencies consider those functions of the flood plain. If what we're trying to get at is primarily private property rights, as Roy pointed out in previous meetings, those are, as far as I know, guaranteed by the Constitutions of the country and the State. Neither of these recommendations are an attempt to write legislation inside this meeting room. I just feel that we have watered it down sufficiently that we've spent now two hours and 15 minutes on what I thought was sort of a vanilla recommendation that we

could come to consensus on fairly quickly, and move on and start tackling some of the bigger issues. I guess I'm just disappointed. It seems to me that adding the second part, I've tried to make it clear in every meeting we've had from day one, that I'm a very strong defender of personal property rights. I think our charge from the Governor was to try to figure out whether the current boundary that we have in the permitting process is sufficient to protect the rights of both sides of the issue: protect private property rights and also to protect the resource. All I was hoping for in the original recommendation was that we recognize the value of the resource, and nothing more.

**Bill Moser:** Turning 90 degrees for one second to connectivity between the river channel and the flood plain; a very good civil engineer told me a long time ago that at a microscopic level there is no difference between poured concrete and the bottom of the riverbed, when it comes to transmitting water. So, what I read in that little semicolon area there is that the five-acre tracts, and over half of the City of Livingston, all of a sudden are back in the flood plain. It may be a big surprise to some of these people if the river decides to move a little bit, and the water is over on the west side of Highway 89, how quickly and with how much ability they would be able to handle a problem that is generated by forces well beyond their control. Nobody over there would be looking to have flood insurance before such an event happened.

**Andy Dana:** In the interest of seeing if we can get some other things on the table, I haven't heard anybody say, "absolutely no" to this. I heard disappointment expressed about the first one, so I'd sort of like to move to Step 2, unless there is somebody who signals now "no", in which case I will table it.

**John Bailey:** Other comments? If not, we'll move to Step 2. I will read proposed recommendation #2, "All permitting and/or regulatory management decisions (including the SAMP) must recognize and respect: (a) the function of the flood plain, including but not limited to: connectivity between the river channel and the flood plain; regeneration of cottonwoods and other riparian vegetation; and maintenance of side channel habitat for spawning and juvenile fish; and (b) the public and private interest in protecting private property and important social, economic and natural resources existing on or near the flood plain of the Yellowstone River."

**Bob Wiltshire:** Fine with me.

**Brant Oswald:** I'll stand aside. I think we have taken what was a baby step and turned it into no step at all.

**Dave Haug:** I guess it's closer to what protects the private interests, so at this stage, I won't stand in the way.

**John Bailey:** I'm somewhat noncommittal myself, but it does reach consensus.

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| <u><b>Recommendation</b></u> | <u><b>Passed by Consensus</b></u> |
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**"All permitting and/or regulatory management decisions (including the SAMP) must recognize and respect:**

- a. the function of the flood plain, including but not limited to: connectivity between the river channel and the flood plain; regeneration of cottonwoods and other riparian vegetation; and maintenance of side channel habitat for spawning and juvenile fish; and**
- b. the public and private interest in protecting private property and important social, economic, and natural resources existing on or near the floodplain of the Yellowstone River."**

So now we're back into general discussion.

**Andy Dana:** Just one point of clarification, we do have Step 3; so as John has pointed out numerous times, we can come back to this one.

**John Bailey:** I suspect we'll have other recommendations dealing in this whole area also. Other recommendations?

**Bob Wiltshire:** I have a recommendation:

#3. Proposed Recommendation by Bob Wiltshire:

“Establish funding from all available sources, including Federal, State, Local, and Private, to create a program to compensate willing landowners who voluntarily agree to eliminate future floodplain development through permanent easements or other mechanisms.”

**Andy Dana:** I appreciate the spirit of this, but I have just a mechanical question, and that is, consider a group of ten five-acre subdivisions in a strip along the river. What if the landowner at the top decides to enroll in this program and lets the river take his land, and it takes out the downstream four? I know that is not what you intend, but it's just a concern that I have.

**Bob Wiltshire:** I would say, Andy, that's his private property right; and if he wants to take an economic value of selling his easement, that's his right to do so.

**Andy Dana:** So you would use Federal, State, Local, and Public funds to allow him to do that?

**Bob Wiltshire:** Yes.

**Jerry O'Hair:** How do you define “floodplain development?” What is it?

**Bob Wiltshire:** Well, obviously there are things like the situation that Andy just was alluding to, as with any of these things, those details have to be worked out. I don't know? If you want me to sit down and write rules, I can do that. I think whoever was agreeing to put up money to fund this program would certainly want to have a say as to what that included. But I would say, Jerry, if you wanted to sell that bottomland, sell an easement on that bottomland, something like that would probably be included. We've got a new business manager coming into the School District here, so I suppose we don't have the opportunity to find out if they'd sell a floodplain easement.

**Joel Tohtz:** I don't have a comment on the recommendation. I have a question. I'm curious who you envision administering the fund?

**Bob Wiltshire:** I guess, once again, I'd say basically the same answer to all this. I'm certain that the people who are going to put up the money would want to have some say. I would imagine that we would see some sort of an organization, a land trust or The Montana Land Reliance. I don't know whether it would be an existing organization or not, which is why I didn't specify. I think it is a good idea, but I don't know all the answers.

**George Jordan:** I'm not 100 percent sure, because I can't really speak for NRCS, but I've heard rumblings that in past Farm Bills or even the current Farm Bill, in some of their programs there is sort of an easement application, similar to what you're describing here. Discussing with those folks what happens is you just can't afford to work in the upper river, the dollar-per-acre up here is substantially higher than what it was funded at. Maybe something to the effect of seeking, at least on the Federal side, Congressional support for increased funding into existing programs, or development of new programs for that purpose. But my understanding is that there is a program in place, it's just way underfunded to touch the land values from Springdale upstream along the Yellowstone.

**John Bailey:** George, I don't have the specifics of the new Farm Bill, but there is supposed to be quite a bit of money. They haven't figured out the regulations, that's for sure, because having talked to NRCS, what they had pre-existing had so many limitations on it that landowners, once they looked at it, wouldn't go into it. But I think the spirit of this, trying to combine programs is good; because I think most of the property has different parts to it, and NRCS has these narrow bands, so to try to actually get a piece, you may need to bring people together. What's coming out of the new Farm Bill; the Farm Bill will probably go away before they make the regulations.

**Dave Haug:** To address that, what's in the new Farm Bill, as I understand it, and I don't guarantee that I'm completely correct, they have the Farmland Protection Program. And it's a 50/50 match, where the USDA puts

up 50 percent and then a private company, like the land trusts or something else, would have to put up the other 50 percent. I don't think they really are limited in that respect, if there's a private side to put up the 50 percent. Bozeman is using this right now, although I don't know exactly where the match money comes from. Up here in Park County, that's the limiting factor: where can they generate the 50 percent match? The USDA side of it is there, as I understand it. The past program was only \$1,500 an acre, or something like that. So the new program is a lot better situation, but you still have to get the private 50 percent match. Twenty-five percent of that could be donated back by the landowner, so he could wind up with 75 percent, but there still has to be the private sector contribution. The individual cannot contribute that 25 percent himself, it has to come through somebody like the Gallatin Land Trust.

**George Jordan:** I don't have any comment on that, it's just that maybe for this recommendation, it would be for you guys to tell us guys what you want. "We want more flexibility in this program," or maybe there's some details, and maybe those will come out later. But you have to tell Congress what you want from them, so that Congress can tell us what we're supposed to do.

**Jerry O'Hair:** You may think that I'm way out here, but a "willing landowner" to sell. There's a way to get a willing landowner, and that's to say, "Well, you're not going to be able to riprap; you're not going to be able to protect your property; you're going to have to let the river eat your property," and then you become a willing seller. Believe me, it's happening around the country. People are becoming "willing sellers." At first I couldn't see anything that bothered me with this, but that really bothers me.

**Bob Wiltshire:** Jerry, I'm perfectly willing to scratch the word "willing," if that is a hang-up. I certainly am not looking for anything like that.

**Jerry O'Hair:** I don't think it changes anything.

**Bob Wiltshire:** Then, I would ask that we table this recommendation and move on.

**John Bailey:** Other comments on this? Do people want to move on and let this one die, without going to the second step?

**Bob Wiltshire:** Unless Jerry can offer a way to amend the intent of what I'm saying? But as I understand it, the whole program gives him a problem.

**John Bailey:** The program is out there now. I think if we make a recommendation on this, it's saying the community thinks that it's another viable approach.

**Bob Wiltshire:** I've got two more floodplain recommendations. Personally, I would assume others do as well, so I don't want to get hung up for another long time tonight on something where we're not moving.

**John Bailey:** Okay, you tabled it. Do you have another one then?

**Bob Wiltshire:** Unless somebody else wants a turn. I thought that was going to be my easy one.

**#4. Proposed Recommendation by Bob Wiltshire:**

"No new municipal development shall be allowed on McLeod Island in Livingston. As existing municipal developments become obsolete, or are replaced, said developments will not be reestablished on McLeod Island."

**John Bailey:** Does that mean roads?

**Bob Wiltshire:** That's a good question. Roads were not my intention, so I am willing to modify the language. I was looking primarily at the schools and some of the other high-value things that we find it necessary to protect.

**Ed Schilling:** What's all on McLeod Island right now? Where is McLeod Island?

**Bob Wiltshire:** As I understand, McLeod Island is that area that's defined by what we call Fleshman Creek below the lagoon, everything to the river side of that. So it would be the County road shops, Mayor's Landing, the golf course, the High School, East Side School, the Middle School.

**John Bailey:** St. Mary's, the golf course...

**Andy Dana:** So, you wouldn't allow the park?

**Bob Wiltshire:** Yes, I would allow a park, and I'm perfectly willing to accept wordsmithing of any sort. I just scratched this out. When we go building that stuff there, then we've got an obligation to protect it. I'm looking long term here. It seems silly to me to keep building stuff there.

**Ed Schilling:** What if we wanted to build a new building at the fairgrounds; no way?

**Bob Wiltshire:** That's a tough question. I'd love to see some sort of limits put in place or something. If we want to build a new pole barn, I don't have a problem with that. If you want to build an indoor hockey arena, with a swimming pool complex, then there's a problem there.

**Andy Dana:** Just an observation, and not particularly a substantive one, about whether there should or shouldn't be development. But an effect of this type of regulation or restriction is that you end up perpetuating the existing structures through repair and upgrades. It's a typical problem under the Clean Air Act, for example, where old plants are grandfathered in, and those old plants continue in production even though they're completely inefficient, and in some cases, unsafe and terribly polluting. That is a practical effect of this type of restriction of things.

**Dave Haug:** Initially, I didn't think any of those schools should ever have been built down there, and I was surprised when the School Board overruled the vote of the people on those situations a number of times. The only problem I have is, if we go to moving them instead of updating them or whatever, it would put a tremendous strain on the tax base in the County. To have to build a new school someplace else, I would support it if we could find some funding, other than just the local tax base, the local homeowners having to pay to move infrastructure.

**Bob Wiltshire:** Well, it is not my intent to mandate that they be moved until such time as they are obsolete or scheduled to be replaced anyway. When we built the old North Side School, West Side School, East Side School, Lincoln School, nobody ever envisioned that some day those would be vacant buildings. Some day, those new schools down there are going to be vacant buildings, when they're going to be not worth continuing to operate. That's where I'm heading with this.

**John Bailey:** Bob, wouldn't you be better off to make a recommendation addressing schools, another one to address other infrastructure? Flood plains in cities get used, people enjoy them, they like to walk in them. This says you can't even build a walking path to me. There's so many different issues down there, and they need to be addressed differently.

**Bob Wiltshire:** Then, with the permission of the Task Force, I'd like to table this for possible reintroduction in a modified form at a future date.

**Laurence Siroky:** I know during some of the discussion of justifying the dike that was built in Livingston, there was a discussion about whether or not the High School really was above, when it was constructed, the base flood elevation by two feet; so it was wrong to include that. I don't know if I'm talking about the High School or the Grade School or which school it was, but I guess I'm suggesting getting those facts straightened out before we come back and discuss this recommendation.

**John Bailey:** They talk about one of the floods where water was clear up the wall of the Civic Center. I wasn't around for that one, but they talk about that.

**Laurence Siroky:** Well, again, we're talking about the 100-year flood.



**John Bailey:** I think where that water goes depends on how the river's functioning. There was the 1918 flood where water was running down 2<sup>nd</sup> Street. Of course we didn't have a highway out here, and the flood plain, when you go south, is huge, so water can go I don't know how far. Without roads it can go that way; so now, with the Interstate, you can't get water into Park Street very well. And the 1996 flood, the then-Mayor of Livingston said that he would not allow water to come in because he would dike with sandbags underneath the Interstate Bridge, and I didn't know how he was going to get away with that, but that's what he said he was going to do. My sense is, that when a recommendation is so broad, specifics then help define. Bob's talking about specific things that someday those schools would probably be vacant, and I think that's an issue to talk about, but it doesn't get talked about in a broad recommendation.

**Laurence Siroky:** What Bob suggests is a good idea, to look at that when you're thinking about replacing those buildings. There was some question in my mind about the facts; are those buildings, in fact, in or out of the 100-year flood plain?

**John Bailey:** Well, we'll know on July 15<sup>th</sup>. But I would think that if buildings were removed, the public would want to develop that as a recreational area. The demand for that would be tremendous. And then there's private property.

**Bob Wiltshire:** I did not mention private property at all.

**John Bailey:** Anyway, you tabled it. Did you have another one now that you want to try?

**Bob Wiltshire:** I do, and again, I am more than willing to accept wordsmithing, and to quickly table this.

#5. Proposed Recommendation by Bob Wiltshire:

"Existing places of importance, including buildings, infrastructure, historic and archeological sites, and significant natural resources, may have their immediate site protected by flood control structures that are elevated above the flood plain. No flood control methods rising above the elevation of the flood plain will be allowed for new development."

I guess I'll take just a second and explain where I'm heading here, because it might not be clear to anyone. We have a lot of valuable property, structures, natural resources, other types of things that are out there existing today. I think that we need to protect those places and I think that putting up dikes to protect those places is sometimes the best solution. I think those can be site-specific. I don't think we need to dike 20 miles of riverbank, but I think we certainly have times when we can put dikes around structures, around other features. I have no problem with protecting existing structures and places of importance that are there today. However, if every time we build a new structure, we continue to do that, we continue to encroach on the flood plain, and I would like to see that not be allowed; plainly spelled out for future development, that that will not be allowed.

**Roy Aserlind:** Could you give me an example of an historic building, or significant infrastructure or archeological site? I'm asking this not facetiously, I don't know.

**Bob Wiltshire:** Roy, I don't either, okay? But when I first wrote this, I said existing structures, and then I recalled that every time somebody uses that word "structures," somebody else says, "Well, what do you mean by structure?" So, that's where I came up with "existing places of importance," and I don't mean to limit it. I'm perfectly willing to accept anybody's recommendations.

**John Bailey:** It seems to me, you now have a proposal that's the opposite of the last one. I know everyone in the community feels the schools are important. So, we're now going to build higher dikes to protect them. I have real problems with this one, because I think it's looking for the wrong solution. A solution may be down on McLeod Island, which isn't really an island. I was actually talking to Jim Robinson about this today, when I was out on the banks of the river when a group of the Corps was here, and we were looking at the bedrock that comes across down below there, where it's narrow and that's the restriction. Somebody said a possibility is, instead of you diking up, leave that bank that's down there, and if you looked at it in high water this year, it's way down that big bank. Come up there, pull it back, and then have your bank come up again. Give it capacity. Now, I'd like to make that recommendation, but I'm trying to get someone to look to see if it's

feasible. If you have to go all the way to Fleshman Creek to do it, it's not feasible. If it seems feasible, then my recommendation would be to get somebody to study it and then let the public look at that. We have to look for solutions, not build dikes. I hope we didn't come here five years to build dikes; I'm sorry.

**Bob Wiltshire:** John, I think you misunderstand my intent, and it's probably the way it's written. What I'm saying here is that I would much rather see a dike put around the immediate High School, around the immediate Middle School, East Side School, and not stretch down the riverbank for the entire stretch. Allow it to sheet flood, protecting these site-specific areas. So that's where I'm heading here, is not to build massive dikes to protect things, but sometimes we could possibly allow some sheet flooding if we protect these structures of particular importance. Now, of course, in my mind, I was also linking this to the easement that we would purchase from someone to do that, but...

**John Bailey:** If you allow sheet flooding at the schools in town, when we first started I thought that we should be opening up the old Fleshman Creek channel, until I saw the cross-sections the Corps did from the dike, and found out that the bottom of Fleshman Creek down to 8<sup>th</sup> Street is higher than all the houses just north of there. So, when we start talking about allowing sheet flooding through Livingston, we're going to get all the houses. It's a non-starter.

**Bob Wiltshire:** I only used that example because that was the one you used. I don't think that that is a practical solution in the City of Livingston. However, I think that there probably are places where we have broader flood plain with not quite so much development where it might be a possibility. I will though, however, ask to have this tabled, because there is obviously significant opposition that we're not going to work through. I guess though, before I do that, if anybody has any other broad comments so I see whether there's any value in trying to rework this.

**Karl Biastoch:** The way you worded that, if somebody wanted to put their house on stilts, they couldn't do it.

**Bob Wiltshire:** Sure, that's fine.

**Karl Biastoch:** They're flood protection structures. If you wanted to raise your house up on stilts you couldn't do it the way you worded it.

**Bob Wiltshire:** If I rewrite, I'll try to look out for that, Karl.

**Laurence Siroky:** The way the State statute reads, is that the only structure that can be legally built is one that a municipality would own, and maintain. I guess what the legislature was looking at when they adopted that was that there were a number of dikes that were built, nobody maintains them, suddenly it breaks and then houses that got built behind that dike are flooded. So, the only dikes that are really useable in floodplain mapping are publicly owned dikes. That's not saying anything about agricultural dikes, that's really separate from this. I can see that Jerry's thinking of his comments already. But agriculture dikes aren't part of that, that isn't what the statute addresses.

**Bob Wiltshire:** I'll just say our job is to make recommendations and not be bound by what existing statutes are. If we thought this was a good idea, I wouldn't hesitate to make the recommendation. I know the legislature won't hesitate to say, "Go away."

**Laurence Siroky:** I guess I want it clear in the discussion whether what you're suggesting is more or less than what we have? So it kind of gets the folks who are looking at these recommendations attention as to what you're really intending.

**John Bailey:** Other comments? You tabled this one also, correct?

**Bob Wiltshire:** Tabled.

**John Bailey:** Do people want to go further, or adjourn?

**Andy Dana:** I just wanted to say, Bob, I appreciate the spirit in which you've offered these. I hope you don't feel too beat up because I think there are nuggets of good ideas in all of the proposals. I think we just need to digest them.

**Bob Wiltshire:** I just think it's important that we throw some of this stuff out, and I don't mind throwing it away. I'm not married to any of it.

**Brant Oswald:** John, one thing that occurs to me too, as we've talked about some of these things all night, and maybe we even have that in our materials somewhere, but it seems like as we've talked about some of these floodplain issues, one of the things that Laurence has been great about is coming back and sort of explaining what current statutes are. I think maybe one thing that might be very helpful, if we could ask for some sort of quick capsule of the County and State floodplain regulations, so that all of us have a little bit of background there.

**Laurence Siroky:** I'm glad you mentioned that because I was going to mention that you can go to our website and the floodplain statute and the regulations are on there, on that website. And then the County regulations, I don't know if they're on the County website, because the ordinances may be more stringent than the State. But the State regulations are on [www.dnrc.state.mt.us](http://www.dnrc.state.mt.us), on the DNRC website, or you can go just to Discovering Montana and follow the links to the Department of Natural Resources. When you get to the Department of Natural Resources website, there's a Water Resources button, and then it will give you choices: dams and canals, and flood plains is one of those choices that you have, and then you follow that to the statute.

**John Bailey:** Any further comments tonight? Otherwise, our next meeting is Tuesday, July 8<sup>th</sup>. We don't know if we can get this facility yet or not, so you'll have to send that out.

**Liz Galli-Noble:** I'll do that tomorrow. I'll send out an announcement.

Note: See *Attachment B* for summary of recommendations that have reached consensus.

#### **VI. Next Task Force meetings:**

**July 8<sup>th</sup>, 2003, Tuesday– Task Force Recommendation Deliberations**  
**Location: Yellowstone Inn**

**July 15<sup>th</sup>, 2003, Tuesday – Task Force Recommendation Deliberations**  
**Location: Yellowstone Inn**

**July 22<sup>nd</sup>, 2003, Tuesday – Task Force Recommendation Deliberations**  
**Location: Yellowstone Inn**

**July 29<sup>th</sup>, 2003, Tuesday – Task Force Recommendation Deliberations**  
**Location: Yellowstone Inn**

#### **VII. The meeting was adjourned at 10:05 p.m.**

## **Attachment A. Steps for Formal Action on Task Force Recommendations**

On April 29, 2003, the Governor's Upper Yellowstone River Task Force adopted the following process for development of recommendations and for adoption of final recommendations to be submitted to the Governor.

### **1. General Discussion Session to Develop Recommendations**

- a. The Task Force will convene meetings to consider proposed recommendations that pertain specifically to the *Topics of Consideration* list previously adopted. The Task Force Chair will oversee and run each meeting according to the procedures set forth below. Issues, comments, concerns, and draft recommendations related to the *Topics of Consideration* under discussion, which have been raised and recorded after the eight research presentations, will be revisited by the Task Force and the public. New comments, concerns, and recommendations may also be raised and recorded.
- b. Task Force members speak first and when they have no further comments, members of the public will be asked for their comments. The Task Force Chair is responsible for ensuring comments remain concise and that they relate to the *Topics of Consideration* under specific discussion.
- c. Upon conclusion of the comment and discussion period in each meeting, the Task Force will propose recommendations formally in accordance with the procedures set forth in Paragraph 2 below.

### **2. Formal Actions on Recommendations**

- a. All recommendations must be proposed by a voting Member of the Task Force and must be clearly stated and recorded.
- b. The Task Force Chair restates each recommendation made and asks the Task Force for final concerns and questions relating to each recommendation.
- c. The Task Force Chair calls for consensus on each recommendation made.
- d. The Task Force formally adopts recommendations that achieve consensus, subject only to modification at the final meeting as set forth in Paragraph 3 below.
- e. If any recommendation fails to achieve consensus, the Task Force may continue to consider that recommendation and may again seek consensus after further discussion, may defer action on the recommendation until a future meeting, or may decide to abandon the effort to obtain consensus on that particular recommendation. (Note: Task Force Ground Rules: Participants who disagree with a proposal are responsible for offering a constructive alternative that seeks to accommodate the interests of all other participants.)

### **3. Adoption of Final Set of Recommendations**

- a. Prior to finalizing its recommendations to be forwarded to the Governor, the Task Force will accept public comment (written only) on the recommendations previously adopted in Step 2.
- b. At its last meetings during which the Task Force finalizes the complete set of recommendations to be forwarded to the Governor, Task Force Members may not propose new recommendations but may propose modifications, amendments, or deletion of any of the previously adopted recommendations in Step 2 for any reason, including but not limited to:
  - i. To address concerns expressed by a Task Force Member's constituency or the public about the original recommendation;
  - ii. To eliminate potential conflicts between recommendations;

- iii. To delete redundant or duplicative recommendations;
  - iv. To integrate scientific studies and data more efficiently into the recommendations; or
  - v. To correct clerical, typographic, transcription, grammatical, or rhetorical errors.
- c. The Task Force will adopt for transmittal to the Governor a complete set of recommendations based on the individual recommendations adopted by consensus pursuant to Step 2 above, as such recommendation may be modified, amended, or deleted by consensus pursuant to Step 3b above.
- d. The final set of recommendations must be approved by the Task Force for transmittal to the Governor by consensus.

## **Attachment B. Task Force Recommendations**

June 12, 2003

Consensus was reached on the following Task Force Recommendations.

Note: These recommendations are subject to final adoption under Step #3 of the *Steps for Formal Action on Task Force Recommendations* (see footnote below for details).

### **Recommendation 5/22/03—Passed by Consensus**

**“Create a local Bank Stabilization Information Clearinghouse to provide information about new and existing methods of bank stabilization, including methods that complement the natural system and methods that might be appropriate for specific individual situations.”**

### **Recommendation 5/22/03—Passed by Consensus**

**“The Task Force recommends that future decisions be made only after thorough consideration has been given to the geomorphology of particular river reaches and their different inherent characteristics.”**

### **Recommendation 5/22/03—Passed by Consensus**

**“That studies be developed which would indicate what types of bank stabilization would work best to achieve particular goals within different geomorphic reaches of the upper Yellowstone River.”**

### **Recommendation 5/22/03—Passed by Consensus**

**“That the existing streamlined uniform permit application process be continued among local, state, and federal permitting agencies.”**

### **Recommendation 5/22/03—Passed by Consensus**

**“Establish financial incentives to help landowners, on a voluntary basis, to remove structures that no longer function properly or are obsolete.”**

### **Recommendation 6/2/03—Passed by Consensus**

**“Establish financial incentives to help landowners, on a voluntary basis, to modify or replace existing structures provided that such modified or replaced structures eliminate or mitigate undesirable impacts on the riparian system.”**

### **Recommendation 6/2/03—Passed by Consensus**

**“Modify or replace existing public structures that have undesirable impacts on the riparian system, provided that such modified or replaced structures eliminate or mitigate those undesirable impacts with no significant adverse effects on existing public or private entities.”**

### **Recommendation 6/2/03—Passed by Consensus**

**“Implement a solution to achieve hydraulically-balanced water surface elevations, with little or no backwater, in the channels separated by Ninth Street and Siebeck Islands.”**

**Recommendation                      6/2/03—Passed by Consensus**

**“Recommend that when the following bridges are replaced or removed, hydraulic impacts identified in the Geomorphology study be lessened: Emigrant Bridge; Carter’s Bridge; Interstate-90 Bridge; Railroad Bridge at Highway 10 East; Highway 10 East Bridge; Highway 89 Bridge near the Shields River; Railroad Bridge at Highway 89; and Springdale Bridge.”**

**Recommendation                      6/2/03—Passed by Consensus**

**“Develop solutions to remove abandoned bridge abutments and piers, and reclaim abandoned approaches.”**

**Recommendation                      6/2/03—Passed by Consensus**

**“That additional studies should be designed and conducted to document the proliferation of noxious or invasive plants along the river corridor, and to evaluate the impacts on fish, wildlife, water quality, soil and bank stability, and economic productivity.”**

**Recommendation                      6/11/03—Passed by Consensus**

**“All permitting and/or regulatory management decisions (including the SAMP) must recognize and respect:**

- a. the function of the flood plain, including but not limited to: connectivity between the river channel and the flood plain; regeneration of cottonwoods and other riparian vegetation; and maintenance of side channel habitat for spawning and juvenile fish; and**
- b. the public and private interest in protecting private property and important social, economic, and natural resources existing on or near the floodplain of the Yellowstone River.”**

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**Step #3.    Adoption of Final Set of Recommendations**

- a. Prior to finalizing its recommendations to be forwarded to the Governor, the Task Force will accept public comment (written only) on the recommendations previously adopted in Step 2.
- b. At its last meetings during which the Task Force finalizes the complete set of recommendations to be forwarded to the Governor, Task Force Members may not propose new recommendations but may propose modifications, amendments, or deletion of any of the previously adopted recommendations in Step 2 for any reason, including but not limited to:
  - i. To address concerns expressed by a Task Force Member’s constituency or the public about the original recommendation;
  - ii. To eliminate potential conflicts between recommendations;
  - iii. To delete redundant or duplicative recommendations;
  - iv. To integrate scientific studies and data more efficiently into the recommendations; or
  - v. To correct clerical, typographic, transcription, grammatical, or rhetorical errors.
- c. The Task Force will adopt for transmittal to the Governor a complete set of recommendations based on the individual recommendations adopted by consensus pursuant to Step 2 above, as such recommendation may be modified, amended, or deleted by consensus pursuant to Step 3b above.
- d. The final set of recommendations must be approved by the Task Force for transmittal to the Governor by consensus.